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legal preparation for those who deal with the criminal. He says: "We have confined ourselves long enough to the mere study of our legal canons. We now set out upon an exact consideration of their material."

The individualization of punishment required by the modern science of criminology necessitates an improved and scientific procedure. An accurate and comprehensive knowledge of the law must be supplemented by an intensive knowledge of the biological, psychological and sociological factors of crime.

This volume is limited to a relatively narrow field. While entitled "Criminal Psychology," it is in reality devoted to one phase of procedure, viz.: The Psychology of Evidence.

It is divided into two parts. Part I, The Subjective Conditions of Evidence (The Mental Activities of the Judge); and Part II, Objective Conditions of Criminal Investigation (The Mental Activity of the Examinee).

Reliability of testimony depends more upon the character of the examiner than upon that of the examinee. The author says: "Any body experienced in their conduct comes to be absolutely convinced that witnesses do not know what they know. . . . Whoever is able to correct the witness's apparently false conceptions and to lead him to discover the error of his own accord, and then to speak the truth—whoever can do this and yet does not go too far, deducing from the facts nothing that does not actually follow from them—that man is a master among us."

Only those mental states of criminals are dealt with which pertain to their character and integrity as witnesses, and which the examiner should understand in order to arrive at the truth. Sense, perception, imagination, association of ideas, recollection and memory, will, and emotion, are carefully studied with a view to ascertain their effect on testimony. The psychological differences due to age and sex are elaborately treated. "One of the most difficult tasks of the criminalist who is engaged in psychological investigation is the judgment of women. Woman is not only somatically and psychically different from man; man never is able wholly and completely to put himself in her place. . . . Some of the greatest mistakes in criminal law were made where the conclusions would have been correct if the woman had been a man." The author regards children as exceptionally good witnesses provided child psychology is well understood by the examiner.

Another valuable portion of the book deals with the psychology of mistakes due to optical, auditory and olfactory illusions, illusions of touch and taste, hallucinations, misunderstandings and the pathofornic lie. A further study is made of errors due to dreams, intoxication and suggestion.

The book is a most valuable addition to American criminological literature, and is of the highest authority in its special field. It should be read by every "criminalist" in the United States.

J. P. L.

A TREATISE ON THE LAW OF TRUSTS AND TRUSTEES. By Jarius Wade Perry. Sixth edition. Edited by Edwin A. Howes, Jr., of the Boston Bar. Two volumes. Pp. 1642. Boston: Little, Brown & Company. 1911.

The lapse of more than a decade since the appearance of the fifth edition of this standard American text-book on the law of trusts, has created a proper field for the editor of the sixth edition. That period of time has been marked by many important decisions, hardening into greater certainty of statement the principles of "trusts" in the several States and courts. The editor has, it would seem, adequately covered his field, in a painstaking and workmanlike manner. The result of his labor has, indeed, considerably enhanced the value of Mr. Perry's work, in particular to the student, though perhaps equally well to the practitioner, who is, after all, but a more advanced scholar.

Since Mr. Howes has retained verbatim the text of the original work, and has confined his labor to the collection of additional or counterbalancing authorities, and the preparation of explanatory footnotes, the scope of a review of the volumes must necessarily be confined to these additions. It

therefore is sufficient to restate the plan as it originally appeared. Volume I is concerned with the history of "trusts"; their kinds as they arise by acts of parties, express or implied, or by implication of law from the intentions or conduct of parties; the establishment of a trust completed by the appointment, acceptance, etc., of the trustee, with a discussion of the general properties of his office; and the conduct of the trust once established. Volume II deals, briefly summarized, with particular kinds of trust duties and powers according to the scope of the settlement or trust deed. Trusts for infants, married women, charitable uses, bondholders, for creditors and the payment of debts, are all fully discussed. The volume concludes with chapters on actions, costs, compensation, and logically last, the determination of the trust.

The editor of the present edition seems to be possessed of a particularly fortunate and clear insight into the problems which prove so difficult in the study of the subject. Whenever the original text offered opportunity for a new, and perhaps a clearer, statement of the principles involved, based upon more recent decisions, he has added copious footnotes, summarizing by rule and by jurisdictions, and citing the cases to date. It is to be regretted, however, that in following Judge Perry's text and plan, Mr. Howes has not taken upon himself to vary it sufficiently to introduce, in the chapters on Express and Implied Trusts, a discussion of what may be called the informal trusts. The student is apt at recognizing a trust when there is a trust deed, or a trust devise, or words not expressly creating a trust, but from which it may be implied. He may also grasp without so great difficulty, the problems of resulting and constructive trusts. But the greatest task for the student, and it appears all too frequently, for the member of the bar, is to understand that the everyday business transactions of men may, and often do, create between them the relation of trustee and *cestui*. Dean Ames has dealt admirably with these problems in his case book, but the text-books on trusts do not seem to have approached the subject on this line. While this may be too far afield for a practicable text-book, yet the value of an intelligent and thorough text, discussing the problems outlined in Dean Ames' collection of cases, cannot be denied. Mr. Howes has, in his footnotes, made frequent citations of notes from the case book referred to, and perhaps adopted the lines of discussion there indicated, but the informally created trusts have not been treated.

Among the many points which have been exhaustively handled, special attention should be called to several. In Vol. I, Section 82, the question of the title to money deposited by one in trust for another, is thoroughly annotated. On page 177 there is added a note on the relation of a general depositor with the bank of deposit, but unfortunately the editor has not included in his discussion the comparative effects of the different forms of indorsement of the commercial paper which forms a large part of all bank deposits. In view of two comparatively recent cases, *Barton v. United States*, 196 U. S. 283 (1904), and *Noble v. Doughten*, 72 Kans. 336 (1905), and the vast amount of litigation under the name of *Armstrong, Receiver*, which marked the close of the last century, dealing with the related subject of the relation between depositors and collection agencies, such a note would have been most appropriate. In the same volume, at page 149, the editor has added the cases to date on precatory trusts, which together with Judge Perry's original notes, afford a complete reference to perhaps all important English and American authorities. The present collection has this advantage over the original notes and text—a classification has been made as the cases have divided themselves, and the line of demarcation is concisely drawn. It is well to note that the ambiguity in the original text at page 105 is corrected in a new note with citations at a different place in the same volume, page 113. Mr. Perry, in his discussion of the statute of wills, has expressed a doubt whether an existing paper referred to in a validly executed will, can be incorporated therein and probated when the incorporated paper is not attested by witnesses. The note mentioned above, though not connected with this part of the text, nor referring to it, would seem to clear away the difficulty. And reference may be made to the leading case of *Allen v. Maddock*, 11 Moore P. C. 201, cited in another part of the same volume.

An excellent addition with the present edition is a note at page 289 on constructive trusts imposed on devisees or grantees who have secured a devise or grant absolute on its face, on an oral promise to hold in trust for certain uses. But one comment may be made on the use of the cases here. Even a careful reading discloses no distinction between a grant *inter vivos* and a devise on the question whether the intended beneficiary of the express trust, unprovable by the seventh section of the Statute of Frauds, may enforce a constructive trust against the grantee or devisee. In both cases he is treated as equally able to do so according to the particular facts and the jurisdiction. It may be thought such a distinction is necessary under the authorities.

Other valuable notes may be found with full collections of authorities, on the subjects of the liability of a trustee for the misappropriation of trust funds by the trustee's agent, though the discussion is not carried out to include the related and important point respecting the liability of a depository bank for the laches, defaults and insolvency of the collection agencies, bank or notarial, which it employs; the subject of equitable conversion as affecting trustees which is a distinct addition to Mr. Perry's original text; the extent of the liability of one trustee for breaches of trust by his co-trustee; legal trust investments in the various States; the American rule on the liability of a defaulting trustee for simple or compound interest. And in the second volume the main additions are exhaustive notes on charitable trusts, together with the original note by Mr. Perry; an especially careful note on the rules governing a mingling of trust funds with the funds of the trustee, and collecting the English and American authorities on the rule that withdrawals from the mingled funds by the trustee for his own purposes, are presumed to be from his own funds, and the qualifications thereof where the protection of the *cestui* demands it, to which might be added the recent case of *Newell v. Hadley*, 92 N. E. 507, 515 (Mass., 1910); and a discussion of the doctrine of *Dearle v. Hall*, 3 Russ 1, collecting to date, the American cases adopting or rejecting the rule.

The editor has largely contented himself with statements of settled law or of the trend of judicial opinion. He has not held a brief for either side on the disputed points. The merit, therefore, of the work done is the summary it presents. It is not going too far to say the result of his labor has made Judge Perry's work a present help in the study of trusts, and enhanced its value to the lawyer who practices in the subject. In doing either Mr. Howes has retained the standing of the book as the leading American authority on this difficult branch of the law.

R. J. B.

THE EARLY COURTS OF PENNSYLVANIA. By William H. Loyd. Boston: The Boston Book Company. 1910.

The present volume, a part of the University of Pennsylvania Law School Series, constitutes a commendable effort to contribute to the understanding of the historic development of American law. As the author states, colonial legal history has not received the attention it deserves. It is, indeed, a rich field in which nearly every phase of judicial and legislative law-making is illustrated. The history of the colony of Pennsylvania is especially interesting, as it takes its beginning with the political and legal ideas of Penn. The author has studied the development of the entire system of courts in Pennsylvania down to the beginning of the nineteenth century. The work is founded upon direct research in all the available sources. The value of this book is enhanced by the manner of treatment; the author does not confine himself to a study of the organization of courts, but in dealing with their jurisdiction and methods he presents an abundance of interesting material which throws light upon the general development of law in the colonial era and the early decades of the Commonwealth. The book is thus of permanent value, and constitutes a building stone in the slowly growing edifice of American legal history.

P. S. REINSCH.

Madison, Wis.